

includes the existing Ayer Yard/Hill Yard described above. GWI has agreed through the Term Sheet Agreement to cause B&E to implement with PAS, NSR, and CSXT, within three months after commencement of B&E's operation of PAS, a suite of operating metrics and goals related to PAS operations.

Moreover, CSXT has agreed through the Ayer Operations Protocol to fund the construction of certain improvements in Ayer Yard/Hill Yard {{ [REDACTED] }}. CSXT and NSR have also agreed that CSXT can use the trackage rights currently held by Springfield Terminal over the PAS line segment from Harvard, MA to CPF 312 to run up to one pair of 9,000-foot CSXT trains (plus locomotives) per day, with additional pairs of CSXT trains available under certain circumstances. {{ [REDACTED] }}

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Therefore, the Proposed Transaction and the Related Transactions will not produce significant changes to the existing routes, patterns, or types of service for the PAR System, PAS, or CSXT, or redirect existing traffic over those networks, with the exception of one NSR intermodal train per day that will run on CSXT's lines instead of PAS, described in further detail below. The Related Transactions will strengthen the critical segment of PAS rail lines in and around Ayer, MA, and will ensure that CSXT will have an efficient and unencumbered route through Ayer, MA for the movement of CSXT traffic into and out of New England, as CSXT integrates the existing CSXT and PAR System rail networks.

B. Changes to Interchanges

As noted above, Springfield Terminal currently operates the PAR System pursuant to leases from other PAR subsidiaries that own the lines, and the PAS Network as a contract operator. CSX intends to merge Springfield Terminal into

CSXT at a later date, which will result in the elimination of the existing physical and revenue interchanges between CSXT and the PAR System/Springfield Terminal. The elimination of these CSXT/PAR System interchanges will allow for faster, more competitive single-line service between the existing CSXT network and the PAR System. As discussed elsewhere in the Application, CSXT will commit to keeping existing gateways open to other rail carriers on commercially reasonable terms.

The PAR System currently conducts a revenue interchange with PAS at Ayer, MA, although because Springfield Terminal operates both the PAR System and PAS, no physical interchange currently exists there. Because the Proposed Transaction will result in B&E operating the PAS Network and CSXT operating the PAR System, PAS and CSXT will institute a physical interchange at Ayer, MA.

C. Changes to Yards

The Proposed Transaction will not result in any immediate changes to the PAR System and PAS yards, except for the CSXT investment in the PAS Ayer Yard/Hill Yard described above. Eventually, CSXT may make incremental efficiency improvements, such as moving certain PAR System job origins from smaller to larger yards, allowing the train crews to serve more customers and perform more yard work. Additionally, CSXT expects that capital improvements in PAR System yards will decrease the number of derailments and accidents and add fluidity to yard operations, improving both safety and efficiency.

D. Changes to Intermodal Operations

As noted above, Springfield Terminal currently operates NSR trains, including some intermodal traffic, over PAS lines between Mechanicville, NY and Ayer, MA, pursuant to a haulage agreement between NSR and PAS. In connection with the NSR Settlement Agreement, NSR will obtain trackage rights allowing NSR to move up to one train pair per day, carrying intermodal and automotive vehicles traffic only, from NSR's connection with CSXT near Voorheesville, NY, over CSXT's east-west rail line to Worcester, MA, then over the rail line of Providence and

Worcester Railroad Company to Barbers Station, MA, and over PAR/Boston & Maine's rail line to Harvard, MA, and finally over PAS's rail line to serve the intermodal terminal located near Ayer, MA. These trackage rights will allow NSR to run double-stacked traffic over the new trackage rights route, reducing the need for the "filet and toupee" operation described above.

E. Labor Impacts

Details regarding the impacts to labor are described in the Employee Impact Exhibit included with the Application.

F. Maintenance and Capital Investment

CSXT plans to increase capital investment across the PAR System to raise track standards, which will include catch-up investments in rail, tie, bridge and yard improvements. Additionally, CSXT intends to implement standard CSXT asset replacement cycles.

G. Impacts on Commuter and Other Passenger Rail Service

The Proposed Transaction will not produce significant changes to either the existing PAR System, PAS, or CSXT routing or volume of traffic. CSXT has no intention of closing routes or lines or diverting traffic away from routes that are currently being used. As noted above, CSXT plans to implement its industry-leading operating practices on the PAR System, modernizing and introducing efficiencies to the PAR System's operations, and emphasizing consistency, reliability, and careful data measurement and management. B&E has agreed to "step into the shoes" of Springfield Terminal as operator of PAS, providing substantially all of the operating services that Springfield Terminal currently provides on behalf of PAS.

All rail users, including passenger service, will benefit from the more consistent and reliable network that will result from the Proposed Transaction. Accordingly, the Proposed Transaction will not affect any existing passenger operations on the rail networks of CSXT, the PAR System, and PAS.

CSXT and B&E commit to fully stepping into the shoes of Springfield Terminal regarding any agreements or commitments made by Springfield Terminal

to MassDOT and MBTA, including with respect to Springfield Terminal's dispatching responsibilities. Specifically, the Springfield Terminal dispatching operations of MBTA and MassDOT passenger trains will continue to be located in North Billerica, MA for the foreseeable future. MBTA and MassDOT will be consulted in the unlikely event that operational considerations require reevaluation of this arrangement.

CSXT is committed to cooperatively work with MBTA and MassDOT to consider the introduction and expansion of passenger service upon request. Upon request, CSXT will work with passenger rail authorities to reinstate pre-pandemic frequencies and schedules. Additionally, B&E has agreed to operate freight service on the PAS Adams Branch on a schedule that will continue to accommodate the operation of MassDOT-designated excursion trains.

Moreover, CSXT commits to continuing to route traffic from the existing CSXT network onto the existing PAR/Springfield Terminal network through Barbers Station and Ayer, rather than using the Grand Junction Branch. If CSXT sees the need in the future to consistently operate using the Grand Junction Branch from Worcester and Framingham, which CSXT does not currently foresee, CSXT is committed to working cooperatively with MBTA to implement capital improvements to accommodate any changes in CSXT freight service.

CSXT plans to install Positive Train Control ("PTC") (I-ETMS) on the PAR System line segment north of the Massachusetts/New Hampshire State line to Brunswick, ME, which hosts the Amtrak Downeaster service described above. The PTC installation and funding responsibility will be coordinated with Amtrak. MBTA has installed PTC (ATC-ACSES), which is in service between Boston, MA and the Massachusetts/New Hampshire State line.

H. Anticipated Abandonments and Discontinuances

At this time, there are no anticipated abandonments or discontinuances, other than the abandonment of the Madison Branch, discussed above.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 22

Verified Statement of Mr. Sean Pelkey

VERIFIED STATEMENT OF SEAN PELKEY

I am Sean Pelkey. I am Vice President Finance and Treasurer for CSX Corporation, parent company of CSX Transportation, Inc. In this statement, I will refer to CSX Corporation and CSX Transportation collectively as “CSX.” My role as Vice President Finance and Treasurer includes responsibility for reviewing CSX’s business plans and forecasts, and conducting diligence and financial modeling regarding proposed acquisitions. My role also includes responsibility for CSX’s Operations Finance and Commercial Finance functions. I have been involved in the analysis and negotiation of CSX’s proposed acquisition of Pan Am Systems, Inc. (“Systems”) (the “Proposed Transaction”) since the bid process. Specifically, I participated in CSX’s due diligence, analysis of the business opportunity, and negotiation of the merger agreement and other related agreements regarding the Proposed Transaction.

I am submitting this verified statement to describe for the Surface Transportation Board (the “Board”) the public benefits that will be realized by CSX’s acquisition of Systems. Through its rail carrier subsidiaries, Systems owns and operates a rail network in New England, which I refer to here as the “PAR System.” Springfield Terminal Railway Company (“Springfield Terminal”), a Systems subsidiary, operates the entire PAR System as the lessee of rail lines owned or leased by other Systems rail carrier subsidiaries.¹ In addition, Systems (through Boston & Maine) owns a one-half interest in Pan Am Southern LLC (“PAS”), a 50/50 joint venture between Boston & Maine and Norfolk Southern Railway Company (“NSR”). Springfield Terminal also operates PAS, but on a contract basis as the agent of PAS.

¹ Systems’ non-operating subsidiary railroads are the Maine Central Railroad Company, Portland Terminal Company, Boston and Maine Corporation (“Boston & Maine”), Northern Railroad, Stony Brook Railroad and the Vermont & Massachusetts Railroad.

As I explain below, the Proposed Transaction, if approved by the Board, will allow CSXT to expand its customer-centered operations further into New England. This will give CSXT's existing customers more direct and efficient access to New England markets. At the same time, it will give the PAR System's existing customers better rail service and create reliable single-line access to the rest of CSXT's rail network. The PAR System network in New England will become integrated into CSXT's broader U.S. rail network, providing expanded market access and increased opportunities to convert traffic from truck to rail and remove that traffic from congested highways.

These benefits strongly support the Board's approval of the Proposed Transaction. But in addition to the benefits that the shipping public will receive from CSXT's acquisition of Systems, CSXT has entered into agreements with NSR and Genesee & Wyoming Inc. ("GWI") that will also strengthen the entire rail network in New England and enhance competition in the region. In these related agreements, NSR will obtain trackage rights that will allow NSR to bring double-stack intermodal trains into the Boston area, which it is unable to do today due to the limitations on the Hoosac tunnel on PAS. CSXT and NSR have also agreed that, when CSXT acquires Systems' 50% interest in PAS, PAS will retain Pittsburg & Shawmut Railroad, LLC, doing business as Berkshire & Eastern Railroad ("B&E"), a class III carrier and a wholly-owned subsidiary of GWI, to replace Springfield Terminal as the contract operator of PAS. GWI already has a substantial presence in New England through four class III rail carriers that GWI controls, and B&E's operation of PAS will improve service over PAS and allow GWI to achieve efficiencies among its New England carriers. In short, CSXT's acquisition of Systems along with the related agreements with NSR and GWI will substantially enhance competition and improve rail service throughout New England.

Because the Proposed Transaction will result in significant public benefits, enhance competition in the region and produce no adverse impacts to the environment or existing passenger service in the Northeast, I urge the Board to authorize and approve the Proposed Transaction.

1. The Proposed Transaction Will Expand the Geographic Reach of CSXT Single-Line Service

The Board’s approval of CSX’s acquisition of Systems, together with the Related Transactions, will result in an end-to-end combination of existing rail networks. CSXT’s 19,500-route-mile network covers the eastern half of the United States, where two-thirds of the U.S. population reside, and sits at the heart of the U.S. industrial complex. Our rail lines reach the Boston metropolitan area in the northeast. However, CSXT does not currently extend into northern New England.

The PAR System, in turn, operates an integrated regional rail network that serves thriving New England markets. Its approximately 808 route miles of rail lines² extend from Massachusetts in the south to the northern reaches of Maine and serve multiple ports and large commodity producers in New England. Systems also owns 50% percent of PAS, an approximately 425 route-mile railroad³. The PAS rail network extends from Rotterdam Jct., NY to the vicinity of Ayer, MA, west of Boston on an east-west line that is bisected by a north-south line on which PAS operates that extends from White River Junction, VT, in the north to New Haven, CT in the south. The acquisition of Systems will add three states – Vermont, New Hampshire and Maine – to CSXT’s current 23-state network.

² The PAR System includes approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage rights route miles.

³ The PAS network includes approximately 281.38 owned (including perpetual freight easement) route miles and approximately 143.62 trackage rights route miles.

The combination of CSXT and the PAR System will be end-to-end and it will create a direct, efficient single-line rail connection between New England and the rest of the Eastern United States served by CSXT. Today CSXT connects with the PAR System principally through an interchange with Springfield Terminal at Barbers Junction, MA, a location just north of Worcester, MA, which is on CSXT's main line between Selkirk and Boston. The Proposed Transaction will allow CSXT to convert interline operations between CSXT and the PAR System/Springfield Terminal through Barbers Junction to efficient, single-line service. The railroad industry has recognized that the conversion of interline to single-line rail service has strong benefits for rail customers and improves rail operations. As to PAS, CSXT connects with PAS principally at Rotterdam Junction, NY. As discussed below, CSXT will maintain this connection with PAS, which will be operated by B&E.

Among numerous other benefits, single-line service on the combined CSXT/PAR System lines will allow CSXT to consolidate and streamline service planning on the PAR System's current network, creating more efficient and reliable service for CSXT's and the PAR System's rail customers. Single-line service will reduce switching and interchange, will eliminate the need to coordinate a hand-off between separate rail carriers, will result in a savings in transit times, and will reduce the chance of unexpected problems in the physical interchange of traffic between two independent carriers. With single-line service and a consolidated information system for freight car location and distribution, rail customers will receive better information and can better monitor their traffic and plan their own operations around rail schedules. Shippers will benefit from a unified customer service interface and access to rates and equipment ordering through a single point of contact.

The creation of an efficient single-line route between CSXT and the PAR System/Springfield Terminal through Barbers Junction will also take pressure off of the transportation network in and around Boston. CSXT currently reaches Boston via lines it sold to the MBTA, over which CSXT retained permanent freight easements. These lines are also heavily used by MBTA's commuter service and CSXT has limited windows in which to operate. But CSXT is able to route traffic into northern New England through Barbers Junction to the west of Boston, allowing us to avoid congestion in the heart of Boston. The conversion of that interline movement to an efficient, single-line movement will preserve and strengthen the Barbers Junction alternative to a direct route to Boston.

2. The Proposed Transaction Will Improve Service for New England Rail Customers.

The Proposed Transaction will also bring our proven operational effectiveness to New England. In the four years since CSXT adopted operating practices focused on scheduled rail service, CSXT has become a first-in-class rail operator with increasingly reliable service. CSXT led the industry in 2020 for average train velocity and terminal dwell metrics reported to the STB. CSX's 2020 averages for line of road train velocity (25.4 mph) and terminal dwell (18.8 hours) are better than CSXT ever performed in a single week prior to 2018.

CSXT's trip-plan system, which focuses on individual cars rather than trains, has allowed us to improve transit times and reliability. We have implemented changes in traditional switching and yard management practices to achieve ambitious schedules, and these changes have reduced variability in our rail operations and increased reliability for our customers. All of these changes have been focused on improving customer service, and they have succeeded in making CSXT a more resilient and reliable provider of rail services. The Proposed Transaction will allow us to bring these service benefits to New England rail users.

As explained in more detail in materials describing CSXT's expected operating plan, the basic routes and service on the PAR System network will not change significantly with CSX's acquisition of Pan Am. However, CSXT intends to bring a very different operating philosophy to the integrated network. In the past few years, CSXT has enhanced its operating philosophy to place greater emphasis on operating consistently and reliably, with careful data measurement and management to ensure accountability. A smaller rail network like the PAR System does not have the resources or scale of operations to implement the type of sophisticated operating systems and practices that CSXT will bring to New England. We know that customers value consistent service. CSXT has developed data systems that carefully measure operating performance and have allowed us to streamline the handling of shipments. These systems give us the ability to identify network problems and promptly fix them to ensure the consistent rail operations that customers want and the reliable service that will attract more traffic from highways to the rail network.

New England shippers will not only experience more reliable service, but those shippers will be able to better manage their own logistics costs. Expansion of CSXT's integrated operations into New England will allow customers to schedule their supply chains more precisely, better manage inventory and reduce those costs. CSXT developed a sophisticated but user-friendly web-based tool, ShipCSX, that allows customers to monitor their freight movements across the network and better control inventory and manage their supply chain. This and other tools we have created provide our customers with valuable ways to better manage their logistics. These benefits will be extended into more of New England with the acquisition of the PAR System.

By increasing the reliability of rail service and the ability of shippers to track their shipments, CSXT can attract business from trucks and reduce congestion on the region's highways. We have seen that shippers often prefer rail service but choose trucks when they do not have sufficiently reliable rail service and cannot manage their inventory as easily as they can with trucks. But the operational and service changes that CSXT has made to its system – and will bring to more of New England – will allow us over time to attract more of the traffic going today to trucks. Our stronger ability to compete with trucks is an important benefit for New England shippers and for the broader New England communities.

CSXT is also a leader in the rail industry in safety metrics relating to train accidents, personal injuries and personal injury frequency. In 2020, CSXT set a new company record for the fewest number of FRA reportable personal injuries, had the lowest injury rate (0.81) for all Class I railroads, and has led the industry two years in a row. The Proposed Transaction will also allow CSXT to import our safety-oriented operating philosophy into New England.

3. Shippers Will Have Expanded Market Access.

One of the reasons CSX decided to acquire Systems is that the PAR System has shown above-market growth over the past few years, indicating that New England is a strong and increasingly important rail transportation market. From 2017 to 2019, the PAR System significantly increased growth in carloads and revenues and managed to attract new customers and expand existing business. With CSX's acquisition, the PAR System's customers will benefit from expanded access to markets on CSXT's rail network and with our interchange partners across the country. CSXT will consolidate and streamline pricing for shippers currently served by CSXT and the PAR System.

To give an example, pulp and paper products are an important commodity handled by the PAR System today. After the Proposed Transaction, shippers of those products will have direct, efficient and single-line access to destinations located on CSXT's extensive rail network. A paper producer located on CSXT in Georgia will now have a single-line route and a single point of contact for pricing for pulp from northern New England. The efficiencies in transportation logistics would give both the producer and pulp supplier an opportunity to expand their business. Another example involves chemical and energy-related imports into New England originating at diverse origins. As a result of newly created efficient single-line rail service into New England, producers of these commodities located on CSXT's lines will now have greater opportunities to market their commodities to New England users. Both producers and consumers will benefit from the expanded market opportunities.

The expanded market opportunities will extend to international trade. The PAR System's rail network connects to four ports in Revere MA, Portsmouth NH, Portland ME, and Saint John, New Brunswick. The PAR System connects to Saint John through a haulage arrangement with the Eastern Maine Railway and New Brunswick Southern Railway. Shippers on the CSXT/PAR System rail network will have greater access to the inbound and outbound traffic using these ports. Substantial new investment is being made in these port facilities. For example, new investment in the Port Saint John in New Brunswick is making that port an increasingly important gateway for international commerce. Rail traffic from Saint John already accounts for a substantial volume of the PAR System traffic. Improved rail access to and from Saint John and the other New England ports will provide new opportunities for rail shippers to access overseas markets.

4. CSXT Intends to Improve Existing Rail Infrastructure and Equipment Utilization

The PAR System rail network will be incorporated into CSXT's larger rail network. CSXT is already the PAR System's largest interchange partner other than PAS. Connections between the two networks are in place and function well. The PAR System's rail network can support current traffic and service levels, although our initial review of the PAR System's infrastructure has identified a few areas where we intend to make capital upgrades over the next two years so that operations over the PAR System can meet current CSXT operating requirements. These capital improvements will give New England rail shippers more reliable service and will enhance the ability of CSXT to take traffic off of highways onto the new, efficient rail network. In addition, as discussed further below, CSXT has entered into an agreement to work with NSR to improve operations and add capacity at the eastern end of PAS to improve traffic flows.

CSXT has a demonstrated record of adding capacity into the rail network through capital investment to accommodate traffic growth and take advantage of new transportation opportunities. CSX's acquisition of Systems will ensure that the future capacity needs of the rail network in New England can be met with adequate investment. In addition, CSXT will improve utilization of existing rail equipment through more effective scheduling and management of operations.

5. The Agreements Reached with NSR and GWI Will Enhance Competition In New England.

As noted above, in connection with its acquisition of Systems, CSXT has reached agreements with NSR and GWI that will strengthen the rail network in New England and enhance competition in the region. There are two agreements. The first is an agreement with NSR addressing NSR's concerns over the potential competitive effects of CSXT's acquisition of

Boston & Maine and its 50% interest in PAS. The NSR Settlement Agreement also includes an agreement relating to improvements in infrastructure and operations at the eastern terminus of PAS, near Ayer, MA. The second is an agreement among CSXT, NSR and GWI to replace Springfield Terminal with B&E, a GWI subsidiary, as the operator of PAS.

NSR Settlement Agreement: On November 6, 2020, NSR wrote a letter to the Board expressing concern that CSX's acquisition of Boston & Maine and its interest in PAS could affect NSR's ability to compete with CSXT for movements to and from New England. NSR noted that when PAS was formed, the Board expected that an upgraded east-west PAS line between upstate New York and the Boston area would allow NSR to compete more effectively with CSXT. CSXT moves traffic between upstate New York and the Boston area over an existing route that runs between Selkirk and the Boston area through Springfield and Worcester, MA. A map has been included as an Exhibit to the Application showing these rail lines, in addition to the other rail lines in the region. NSR expressed concern that CSXT's acquisition of an interest in PAS could affect competition over the roughly parallel routes between upstate New York and Boston.

After NSR submitted its letter to the Board, CSXT met and conferred several times with NSR in an effort to address NSR's concerns. On February 23, 2021, CSXT and NSR signed a Settlement Agreement (attached to this Verified Statement) in which CSXT and NSR agreed to several actions that will address NSR's concerns. Those actions fall into two broad categories – provisions to avoid potential competitive harm and provisions that enhance competition.

In the first category, CSXT and NSR have agreed that if the Board approves CSX's acquisition of Systems, PAS will replace Springfield Terminal as the contract operator of PAS with B&E, which will operate and set rates for PAS in a non-discriminatory fashion as to all rail

carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS.

Therefore, as a result of the Settlement Agreement, CSXT (as the owner of Springfield Terminal) will not operate PAS and will not have any control over the rates set by PAS, as rate-setting will be exclusively the responsibility of B&E. CSXT will retain Boston & Maine's one-half interest in PAS, and CSXT will be able to use PAS as an alternative means to access New England, but CSXT will not be able to affect the access of other carriers to New England over PAS.

To further ensure that CSX's acquisition of an interest in PAS is competitively neutral, CSXT has agreed to sell its interest in PAS under specified terms if NSR or its assignee wishes to acquire CSXT's 50% interest within seven years, in addition to an ongoing right of first refusal to NSR. Finally, CSXT agreed to transitional restrictions on the rates it will charge for future movements originating or terminating on the existing PAR System lines to and from PAS. These rate restrictions will support the continued viability of PAS as an alternative to CSXT for access to New England rail shippers by carriers other than CSXT.

The second category of provisions in the Settlement Agreement go well beyond the prevention of potential competitive harm and ensure that rail competition will be substantially enhanced in New England. Three aspects of the NSR Settlement Agreement are particularly important. First, NSR will be granted trackage rights to move a pair of premium intermodal/automotive trains per day between upstate New York and Ayer on CSXT's lines. This will allow NSR to run double-stack intermodal trains into the Boston area. The current PAS route does not accommodate double-stack intermodal trains. Currently, NSR is required to remove a layer of intermodal containers on trains before moving them on PAS.

The second competitive enhancement is that CSXT and NSR have agreed to replace the carload cap on the use of trackage rights on PAS over a short segment of the PAS lines between

Harvard MA, milepost 25, and the terminus of PAS just to the east of Ayer, at a location known as CPF 312, milepost 311.97 (the “Island Line”). Traffic moving on CSXT’s line into New England must pass over this short segment of PAS. The traffic moves today over this Island Line segment under trackage rights that were granted to Springfield Terminal when PAS was created in 2009. But the trackage rights have a volume cap based on 2007 traffic levels, which have long been exceeded by market demand. Modification of the cap on trackage rights and provisions for increasing capacity as needed in the future will ensure that an integrated CSXT/PAR System rail network will be able to meet demand for rail service in New England through a route that avoids the congested Boston metropolitan area.

Third, CSXT and NSR have set out in an attachment to the NSR Settlement Agreement (the “Ayer Operating Agreement”) certain principles to strengthen existing operations of PAS lines following consummation of the Proposed Transaction. In addition, CSXT has agreed to fund the construction of certain improvements in facilities in Ayer { [REDACTED] } to ensure efficient operations. These agreements will strengthen PAS and enhance competition for movements between New England and the rest of the U.S. rail network.

GWJ Term Sheet Agreement: The second agreement, among CSXT, NSR and GWJ, provides that upon consummation of CSXT’s acquisition of Systems, PAS will retain B&E, a subsidiary of GWJ, to replace Springfield Terminal as the contract operator of PAS. The Term Sheet Agreement is also attached to this Verified Statement. GWJ already controls four shortline rail carriers in New England, and GWJ will be able to use its operating expertise and knowledge of the region to provide efficient rail service on PAS. PAS will require that B&E provide non-discriminatory service to all carriers connecting with PAS. PAS will also require B&E to set PAS rates at levels that are competitively neutral toward connecting rail carriers. The operation

of PAS by B&E will strengthen PAS as a viable competitive alternative to CSXT for movements of traffic into New England.

6. The Proposed Transaction Will Have No Adverse Competitive Impacts.

As explained above, and when considered in tandem with the Related Transactions, CSX's acquisition of (1) Boston & Maine and its one-half interest in PAS, and (2) Springfield Terminal, the current contract operator of PAS, will not affect competition for access to New England rail customers over two competing routes between upstate New York State and the Boston area. If the Board approves the Proposed Transaction, B&E will replace Springfield Terminal as the contract operator and rate-setter of PAS, and CSXT/Boston & Maine will not control pricing of PAS movements. Indeed, operation of PAS by B&E will strengthen PAS as a competitive option for rail movements to and from New England.

In all other respects, the Proposed Transaction is a straightforward end-to-end transaction that incorporates a smaller, regional railroad into a larger railroad's national rail network. The Board has approved many end-to-end transactions such as this one and it is well recognized that such transactions generally strengthen competition, particularly intermodal competition, by improving the efficiency and reliability of rail service. CSX's acquisition of Systems will produce these same benefits without any adverse impact on competition.

Switching Commitment: With the exception of four shippers in the Boston area, no shippers on the PAR System will have fewer rail options after the Proposed Transaction. The vast majority of shippers on the PAR System today have direct access only to a single railroad (Springfield Terminal) and that single option will not change with the consolidation of the PAR System into CSXT's network. Instead, rail shippers in New England will have improved access to CSXT's broader national rail network. There are only four shippers, located just north of

Boston, whose rail alternatives will go from two (PAR Systems and CSXT) to one (CSXT).

CSXT is committing as part of this Application to provide a switching service for those 2-to-1 shippers to reach PAS to preserve those shippers' current access to multiple rail carriers.

Gateways Commitment: The PAR System's rail network also connects with a number of short-line railroads. Some of these railroads move traffic into and out of New England in coordination with other Class I railroads. Also, Canadian Pacific Railway Limited, through its subsidiary Central Maine & Quebec US Inc., has a direct connection with the PAR System in Maine, at Northern Maine Junction. Shippers seeking to use these other railroads will not be affected by CSX's acquisition of the PAR System. Indeed, by improving rail service in New England, CSX's acquisition of the PAR System will expand opportunities for other rail carriers whose access may have been limited by practical difficulties in reaching rail customers over the PAR System network. In any event, as part of this Application, CSXT is committing to (a) keep all existing active gateways affected by the Proposed Transaction open on commercially reasonable terms, and (b) waive any right CSXT might otherwise have under the Board's rules to refuse requests by shippers to establish local, separately challengeable rates for movements on the PAR System to an interchange with another rail carrier.

PAS Commitments: The replacement of Springfield Terminal with B&E as PAS operator and rate setter is competitively neutral except for a limited overlap of operations by existing GWI subsidiary rail carriers and PAS on PAS's north-south line where rail shippers and connecting carriers could view their competitive alternatives as being reduced. The parties are addressing this issue through commitments to preserve existing competition.

In particular, a GWI subsidiary, New England Central Railroad ("NECR") currently operates over the rail line north of East Northfield, MA into Vermont that is also used by PAS.

There are two rail shippers on this line that currently have access to both PAS and NECR. Since B&E is part of the GWI corporate family, these shippers could be concerned about future rate negotiations with B&E and NECR. To ensure that these shippers will not lose the benefits of competitive pricing that currently exists, CSXT and NSR have agreed that PAS will establish rates for these customers at current levels, subject to future reasonable escalation, as long as B&E is operator of PAS.

In addition, a shortline railroad, the Vermont Railway (“VTR”), connects with both NECR and PAS at two locations on this line segment – Bellows Falls, VT and White River Junction, VT. VTR has haulage rights on PAS today to connect its lines between Bellows Falls and White River Junction, and those haulage rights will be unaffected by B&E’s operation of PAS. To ensure that B&E’s operation of PAS will not have an adverse impact on VTR’s access to other rail connections, CSXT and NSR have agreed to the following commitments: (1) For movements to and from the east with connections to PAR, PAS will establish rates at current levels, subject to future reasonable escalation, as long as B&E is operator of PAS. (2) For movements to and from the west with connections to CSXT at Rotterdam, NY, PAS will establish rates for movements between Hoosic Junction (where VTR interchanges with PAS today) and Rotterdam (where PAS connects with CSXT) at current levels, subject to future reasonable escalation, as long as B&E is operator of PAS. (3) VTR moves traffic to and from storage facilities at East Deerfield, MA, a location on PAS. To ensure that rates on these movements remain at competitive levels, PAS will agree to provide haulage between the storage facilities at East Deerfield and Bellows Falls (as noted above, haulage already exists between Bellows Falls and White River Junction) at rates that are the average of current interline rates for those movements for as long as B&E is operator of PAS. (4) PAS will commit to providing

VTR with service that is the same or better as that provided today on the movements described above.

Finally, B&E will not share with any other GWI-controlled rail carriers any information regarding rate divisions from connecting railroads that B&E becomes aware of as a result of operating PAS.

7. The Proposed Transaction Will Have No Adverse Environmental Effects.

Similarly, CSX's acquisition will have no adverse environmental effects. Traffic volumes, available lanes, routing and train composition will not change in ways that could impact the environment. Indeed, we believe that the acquisition will actually produce strong environmental benefits. CSXT has made great strides in reducing our emissions and fuel consumption, including setting another fuel efficiency record in FY 2020 by consuming only 0.96 gallons of fuel per 1,000 gross ton miles. Every shipment on CSXT consumes 20% less fuel than it did a few years ago. CSXT was recently named one of the Top 20 Most Sustainably Managed Companies in the World by The Wall Street Journal. We will bring our experience in achieving environmental benefits to New England with the acquisition of the PAR System. Also, as noted previously, the efficiency and reliability of our rail service will allow more traffic to move from trucks to rail. This benefit will be especially strong as the population of New England grows.

8. The Proposed Transaction Will Not Adversely Affect Commuter and Passenger Service.

CSXT has long-standing relationships with commuter agencies in the Boston area and we have worked together historically to ensure that freight and passenger service can efficiently share facilities. In fact, we have taken many steps over the past few years to manage traffic flows around Boston to avoid unnecessary conflicts with commuter service on lines used heavily

by commuters. An important part of those efforts has been to route traffic into New England through Ayer over the Island Line discussed above. The Proposed Transaction will reinforce those efforts and benefit commuters and passenger service in the Boston area.

The PAR System and PAS operate over a number of rail lines that share freight and commuter and passenger service. Some of those lines are owned by commuter agencies that also carry out dispatching on the lines. Other lines are dispatched by the PAR System (through Springfield Terminal) in ways that ensure coordinated and efficient service. With respect to the PAR System lines, CSXT does not intend to make operating changes or to change the dispatching on those lines, so there is no reason to expect any impact to passenger or commuter service. With respect to the PAS lines, CSXT, NSR and GWI have agreed that B&E will assume the existing dispatching obligations of Springfield Terminal with respect to PAS lines, which includes dispatching commuter trains that move over PAS. Therefore, commuter and passenger service will also see no impact from the change in PAS operator. In addition, CSXT has already begun discussions with the relevant commuter agencies and Amtrak to ensure that there will be a seamless transition from the PAR System/Springfield Terminal to CSXT after the Proposed Transaction.

9. The Proposed Transaction Will Not Have An Adverse Impact on Labor

As I have previously noted, Springfield Terminal currently operates both the PAR System and PAS. CSXT is acquiring the PAR System in the Proposed Transaction. CSXT does not expect the acquisition of the PAR System to impact Springfield Terminal employees involved in operation of its lines. Should such employees be impacted, CSXT is asking the

Board to impose the *New York Dock*⁴ conditions on the Proposed Transaction. Springfield Terminal employees involved in the operation of PAS will, however, be impacted by the Related Transaction of replacement of Springfield Terminal as PAS operator with B&E, a subsidiary of G&W. The new operator will offer positions to Springfield Terminal employees, but expects to use fewer employees than does Springfield Terminal to operate PAS. The parties to the Related Transaction are asking that the *New York Dock* conditions be imposed on that Transaction to address impacts on Springfield Terminal employees affected by the change in operator.

* * * * *

CSX's acquisition of Systems and integration of the PAR System network will connect New England rail users to CSXT's larger eastern rail network and expand efficient single-line service and market access for CSXT's and the PAR System's existing customers. The public will benefit from improved service that CSXT will bring to the PAR System's existing rail network. I urge the Board to authorize and approve the acquisition.

⁴ *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C 60, *aff'd New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979) ("*New York Dock*").

I, Sean Pelkey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on February 25, 2021.

/s/ Sean Pelkey_____

Sean Pelkey

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

ATTACHMENT TO VERIFIED STATEMENT OF MR. SEAN PELKEY

Settlement Agreement

Settlement Agreement

CSX Transportation, Inc. (“CSX”) enters this Settlement Agreement with Norfolk Southern Railway Company (“NSR”) to resolve issues between the parties regarding 1) the proposed acquisition by CSX and CSX Corporation of Pan Am Systems, Inc. (“Pan Am”) and 2) the resulting acquisition of Pan Am’s interest in Pan Am Southern LLC (“PAS”) (the “Transaction”).

CSX intends to file an Application seeking authorization from the Surface Transportation Board (“STB”) for the Transaction. In connection with its Application for STB authority, CSX will advise the STB that it has reached the Settlement Agreement set out herein, submit a copy of this Settlement Agreement to the STB, and request that the Settlement Agreement be established as a condition to the STB’s approval of the Transaction. Based on this Settlement Agreement, NSR will support CSX’s STB Application and its implementation consistent with this Settlement Agreement. CSX will provide NSR with an appropriately redacted draft of the Application prior to filing it.

Upon entering this Settlement Agreement, CSX and NSR will prepare the definitive agreements or amendments to existing agreements as necessary to implement the terms set forth below. Such definitive agreements or amendments shall take effect on the date the Transaction is consummated.

CSX and NSR agree to the following:

I. Operator of PAS

CSX and NSR agree that Genesee & Wyoming Inc. (or a wholly owned affiliate thereof, “G&W”) will replace Springfield Terminal Railroad Company (“ST”) as the contract operator of PAS upon:

- (1) Establishing required agreements among the relevant parties including G&W addressing G&W’s operating responsibilities, compensation and rate-setting obligations;
- (2) G&W’s commitment to operate PAS so that PAS provides service in a non-discriminatory fashion to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS; and
- (3) G&W’s commitment to:
 - a. Execute the pricing protocols defined in this agreement;
 - b. Preserve pricing integrity of existing contracts and quotes;
 - c. Price moves in such a way that, while not necessarily equal, do not discriminate between connections except based on mileage, density and similar operating characteristics.
 - i. The Norfolk Southern Joint Use Agreement, will be honored and shall be considered as an exception to this otherwise all-encompassing rule.

[REDACTED] The parties agree that the Transaction, and the introduction of G&W as an operator of PAS, will be subject to the *New York Dock* labor protection provisions, including without limitation any dismissal or displacement payments required to be made to the employees who held the [REDACTED] positions that NSR and CSX agree have been allocated to PAS, as shown on Attachment A, “PAS Employee Allocation,” attached hereto.

[REDACTED]

II. Ownership of PAS

Starting immediately after consummation of the proposed Transaction and continuing for [REDACTED] years thereafter, NSR, or its assignee, may initiate a defined appraisal and sales process for the sale of CSX’s 50% ownership interest of PAS to NSR or the assignee of NSR (“Near-Term Sale”).

For purposes of the Near-Term Sale, CSX’s 50% share of PAS will be valued as follows:

1. The purchaser will pay the greater of (1) [REDACTED] or (2) the “valuation”
2. The “valuation” will be calculated by [REDACTED]
 - a. [REDACTED]
 - b. In the event of a Near-Term Sale initiated within the first [REDACTED] years following consummation of the Transaction, the minimum price to be paid will be [REDACTED] and the maximum price to be paid will be [REDACTED]. In the event of a Near-Term Sale initiated within the [REDACTED] years following consummation of the Transaction, the minimum price to be paid will be [REDACTED] and the maximum price to be paid will be [REDACTED].
 - c. Should CSX receive an offer for CSX’s 50% share of PAS during the first [REDACTED] years following consummation of the Transaction, and NSR chooses not to initiate a Near-Term Sale, then CSX will have the right to sell its interest without restrictions on sale price.

At any time, CSX shall only have the ability to sell the entirety of its 50% ownership interest in PAS, and no less, to NSR, its assignee, or a third party. NSR shall additionally and simultaneously receive an assignable and customary right of first refusal in favor of NSR. The right of first refusal shall be in addition to the rights of NSR described above and remain in effect for so long as CSX owns its 50% of PAS. After the first seven years following consummation, the above restrictions to the sale price shall not apply. NSR, or the assignee of NSR's assigned right of first refusal shall exercise that right of first refusal no later than [REDACTED] after receiving the material terms of CSX's sale of its interest to a third party (the "ROFR Period"). If NSR, or its assignee, does not exercise such right of first refusal within the ROFR Period, CSX may sell the entirety of its ownership interest to the applicable third party on substantially the terms presented to NSR, or its assignee; provided that if CSX has not executed with the buyer an agreement to sell within [REDACTED] after the expiration of the ROFR Period, such proposed sale shall again be subject to NSR's right of first refusal.

The provisions of this Settlement Agreement shall survive in the event of CSX's sale of its 50% stake in PAS.

III. Governance of PAS

Prior to the closing of the Transaction, NSR agrees not to pursue the exercise of its change of control rights under the applicable PAS agreements that would otherwise arise in connection with the Transaction. The NSR change in control rights contained in the LLC Agreement or any of the JV Transaction Agreements (as defined in the LLC Agreement), however, shall be amended to apply post-Transaction with regards to CSX's 50% ownership interest in PAS in the same manner as it currently applies to Pan Am Railway's 50% ownership interest in PAS. Should NSR in the future obtain voting control of the Management Committee through the exercise of its change in control rights, CSX will continue to have a 50% vote on capital contributions, indebtedness or other financial obligations imposed on the members, and on certain out-of-the ordinary-course actions to be determined which at a minimum, include without limitation (a) repealing, modifying, waiving any provision of, or amending the LLC Agreement or any of the JV Transaction Agreements to which PAS is a party, (b) sale of PAS or substantially all of the assets of PAS, (c) change of PAS operator and admission of any other carrier to the PAS line, and (d) changing the profit and loss allocation of the members.

IV. NSR Trackage Rights

CSX is agreeable to providing trackage rights to NSR between the Voorheesville area and Hill Yard to service the Ayer intermodal terminal for the movement of one train pair per day carrying intermodal and automotive vehicles traffic only ("NSR Premium Trains"). CSX's cooperation and assistance will be needed for design and construction, as well as for T&E qualification on CSX's and Pan Am's trackage, and CSX agrees that such cooperation and assistance shall not be unreasonably withheld. Other terms associated with this provision are subject to the following:

- (1) NSR entering trackage rights agreements on industry standard terms except as described hereinafter, with CSX, Providence and Worcester Railroad Company ("P&W"), and Boston and Maine Corporation limited to no more than one pair of NSR Premium Trains per day operating over the trackage rights;
- (2) NSR and CSX will agree to a reasonable schedule and operating plan for the NSR

Premium Trains that is efficient, consistently executable and avoids any degradation of CSX's operational efficiency on the route between Voorheesville and Harvard. Further, NSR and CSX agree to work towards an operating plan and schedule that accommodates the operation of the NSR Premium Train with one crew between Voorheesville and Ayer. If it is determined that such a schedule is not consistently executable with one crew even with an NSR crew change point at or in close proximity to Voorheesville and at Ayer, NSR and CSX will work to establish an operating plan that minimizes total crew requirements for the operation;

- (3) Said trackage rights agreements with CSX and B&M shall be subject to the terms of the 2002 simplified reciprocal trackage rights compensation letter agreement between NSR and CSXT, as supplemented and amended from time to time, and as modified by the terms of the trackage rights agreements;
- (4) NSR will assume the capital cost of the connections and infrastructure necessary to double stack the route, including:
 - (a) the Voorheesville/Schenectady connection;
 - (b) the clearance upgrades needed on the P&W segment south of Ayer; and
 - (c) the clearance upgrades needed between Barbers Station and Harvard;
- (5) NSR Premium Trains shall meet CSX clearances and train length shall not exceed the siding capacity between Schenectady-Harvard;
- (6) NSR Premium Trains shall be limited to 9,000' plus locomotives unless otherwise agreed.
- (7) NSR Premium Trains must be sufficiently powered to maintain track speed on the segment. CSX and P&W will have consent rights to the capacity design and build; and
- (8) In the event of the implementation of an NSR merger with another Class I, the trackage rights will be subject to termination by CSX with four (4) years advance notification, or the time that it takes to clear the Hoosac Tunnel, whichever is shorter. If CSX chooses to terminate the trackage rights within 20 years of NSR's commencement of running the NSR Premium Trains, CSX will be required to reimburse for the actual, documented costs of the infrastructure improvements described above. If CSX is the first to implement a merger with another Class I, the trackage rights will not be subject to termination.
- (9) The cars in these trains shall remain in the revenue waybill account of NSR and will not be for the benefit of another party.

At the same time that CSX files its application with the STB to seek approval to acquire Pan Am, NSR will seek trackage rights authority from the STB in sub-dockets related to CSX's application for authority to acquire Pan Am, including filing agreed-upon drafts of the trackage rights agreements.

CSX may petition the STB for a power of attorney to file discontinuance on NSR's behalf upon termination should NSR not file within 180 days of the timeframe set forth in Section IV(7) above.

NSR will be responsible for paying labor protection costs for adversely impacted employees, specifically NSR employees and any ST/CSX employee on the PAS line adversely impacted as a result of rerouting the NSR Premium Trains off of PAS and onto CSX.

Prior to the operation of the NSR Premium Trains, NS, CSX and G&W will negotiate an Ayer Intermodal Facility Use Fee that will include compensation for the land, assets, maintenance and switching of the facility, regardless of whether the NS (or CSX from the north) is using the facility.

[REDACTED] This fee shall be in addition to (1) trackage rights fees between Barbers Station and Ayer (CPF 312 and Ayer for traffic from the north) and (2) any lift and associated fees incurred at the terminal.

V. Hoosac Tunnel

If the Hoosac Tunnel and/or the Little Tunnel becomes impassable, CSX agrees to allow PAS trains requiring an alternative route on its southern route between Rotterdam Jct., NY and Harvard, MA pursuant to the terms of standard detour agreements similar to previous emergency situations where CSX and NSR have assisted each other in the past.

VI. Ayer Trackage Rights

NSR and CSX agree to substantial modifications in the Ayer Trackage Rights as defined in Attachment B, "Ayer Operations Protocols, Engineering Planning, and Capacity Roadmap" attached hereto.

The PAS/ST Joint Use Agreement will be modified to incorporate this model, remove the carload limit, and replace it with graduated requirements for adding CSX overhead train pairs. Except as otherwise defined in Attachment B, CSX will not be responsible for the funding of infrastructure required to accommodate capacity considerations that are attributable to current or future non-CSX causes, including the pair of NSR Premium Trains rerouted over CSX.

VII. PTC

The remainder of funds received from MBTA for PTC installation on PAS that eventually transfer to CSX after STB approval and CSX's consummation of the Transaction will be dedicated to PTC costs on PAS.

VIII. Hoosac Legal Claim

After STB approval and consummation of the Transaction, CSX agrees to support legal action and will confer in good faith with NSR on the appropriate use of PAS funds or parent funds to support the recovery and litigation effort.

IX. Ayer Switching District

CSX agrees to interchange traffic to/from Ayer Industry Locations (as defined in the Ayer Switching Agreement), via Rotterdam for a transitional [REDACTED] period from the date CSX consummates the Transaction (“Rotterdam commitment”), except to and from the following origin/terminating states and district: Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia, the District of Columbia, Maryland, and, to the extent that the traffic originates or terminates on a CSX local station only, Connecticut, Rhode Island, and Massachusetts (the “Excepted States”). CSX may route via a PAS gateway other than Ayer any traffic originating or terminating in Connecticut, Rhode Island, and Massachusetts which does not originate or terminate at a CSX local station (“Non-local commitment”). Traffic to or from the Excepted States may be switched at CSX’s option through Barbers Station without prior or subsequent movement over CPF 312 subject to a switch charge of [REDACTED]

[REDACTED]

[REDACTED]

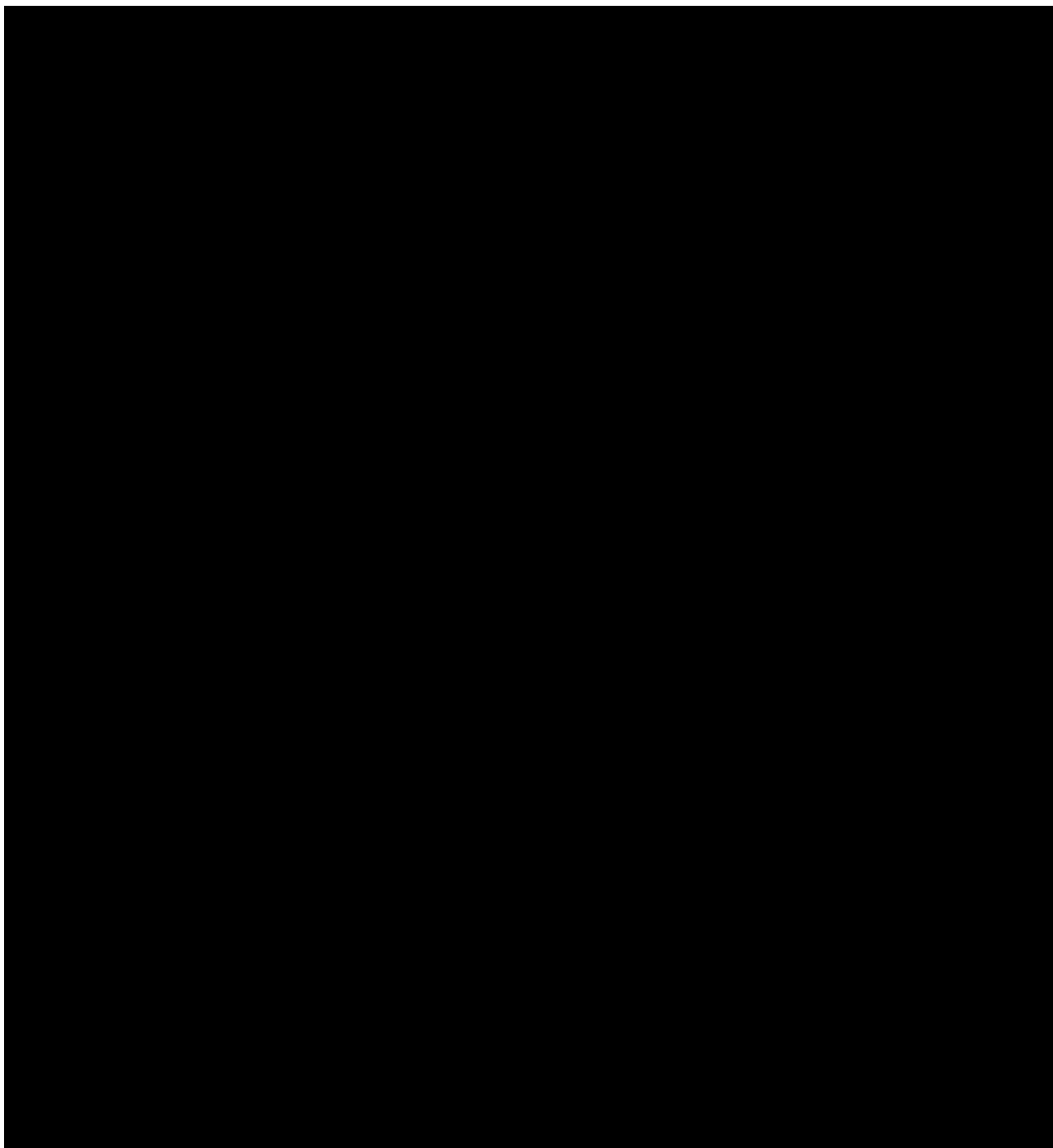
[REDACTED]

All other aspects of the Ayer Switching provisions are detailed in Attachment B.

X. Zone 1-6 Pricing

[REDACTED]

[REDACTED]



XI. Release of Prior Ayer-Related Claims

NSR will release Pan Am and/or CSX as successor or otherwise for any past claims related to the PAS Agreements at Ayer as to overhead trackage rights, switching, haulage, and interchange.

XII. Implementing Agreements and Amendment

The parties will promptly commence and diligently pursue the finalization of the definitive agreements and amendments to existing agreements necessary to implement the terms contained

in this Settlement Agreement, provided, however, that if the parties do not conclude the definitive agreements within sixty (60) days of the execution date of this Settlement Agreement, either party may commence arbitration over terms other than the terms contained herein and seek relief from the arbitrator to establish those other terms. The submission by each party shall contain drafts of those terms that are in dispute and the arbitrator shall select without modification among those submissions, provided, the arbitrator shall not have the power to alter the terms contained in this Settlement Agreement nor to enter a decision that does not include the terms contained herein. In no event shall the arbitration period from commencement until decision exceed three (3) months. In any other respect, the arbitration shall be governed by the law of the state of Delaware, exclusive of its conflicts of law principles and be submitted to a single arbitrator administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, and the Large Complex Case Procedures of the AAA then in effect (the “Rules”) and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in Washington, DC and the single arbitrator shall be appointed by the AAA using the listing, ranking and striking procedure in the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney with no less than fifteen years of experience with large commercial cases and an experienced arbitrator. If the arbitration is not concluded by the time of an STB decision approving CSXT’s acquisition of Pan Am and change of the PAS operator, CSXT/ST will continue to operate PAS consistent with current operations and will agree to maintain PAS rates at current levels with standard AII-LF escalation pending completion of the arbitration and until G&W (or another 3rd party operator) has reached all necessary agreements to allow it to replace CSXT/ST as the operator of PAS.

XIII. Confidentiality

Other than as required for regulatory authority, the contents of this Settlement Agreement shall remain confidential except that this Agreement with reasonably minimal agreed upon redactions, can be disclosed to Pan Am subject to Pan Am’s agreement that it will remain confidential.

XIV. Consents

The obligations of the Parties contained in this Settlement Agreement shall be subject to the Parties acquiring any necessary consent from third parties, government authorities, or any other necessary consent to effectuate the proposed Transaction.

XV. Regulatory Authority

The obligations of the Parties to one another contained in this Settlement Agreement are subject to the Settlement Agreement being authorized and established as a condition to the STB’s approval of the Transaction as provided in the introduction. The Parties shall act in good faith and use reasonable commercial efforts to satisfy any conditions imposed by the STB on its approval of the Transaction.

[Signature Page Follows]

Settlement Agreement – Execution Version

Signature Page

The Parties hereto have caused this Settlement Agreement to be executed by their respective authorized representatives.

CSX TRANSPORTATION, INC.,

a Virginia corporation

By: Sean Pelkey
(print name)

Name: Sean Pelkey
(signature)

Title: VP and Treasurer
(print title)

Date: 2/23/2021

NORFOLK SOUTHERN RAILWAY COMPANY

a Virginia corporation

By: Michael R. McClellan
(print name)

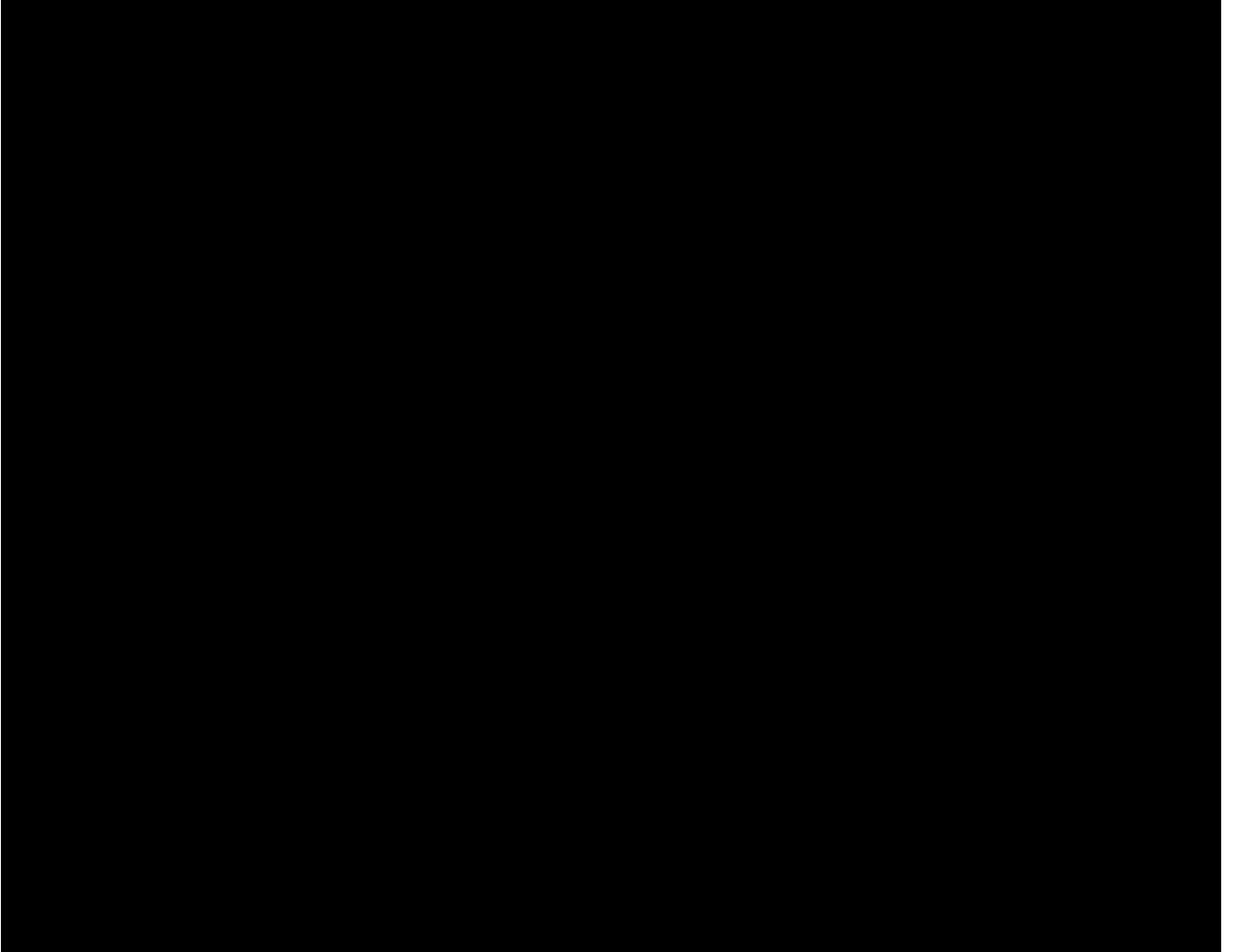
Name: M. R. McClellan
(signature)

Title: VP Strategic Planning
(print title)

Date: 2/23/21

(signature page to Settlement Agreement)

Settlement Agreement – Execution Version REDACTED - TO BE PLACED ON PUBLIC FILE



Attachment A

[REDACTED]

[REDACTED]

Attachment B

Ayer Operations Protocols, Engineering Planning, and Capacity Roadmap

This document is being developed to establish concrete plans and protocols for the operations through the Ayer switching area (Harvard to CPF 312) and the fluidity-improvements required for additional CSX usage of the capacity in the Ayer switching area. This is intended to be used in tandem with all other terms of the CSX – NS Settlement Agreement. This document assumes that the G&W is the contract operator of Pan Am Southern.

I. Levels of Service (LOS) and Operations

- a. NS, CSX and G&W agree to establish **Levels of Service (LOS)** metrics and goals for freight moving to, from and through Ayer, MA, including local service metrics, and to make these metrics visible to all parties at least once per month.
 - i. Metrics will be divided into those that are competitive (commercially sensitive) in nature and those that are not.
 - ii. Metrics that are not competitive in nature but associated with the movement of CSX traffic through the Ayer switching area will remain available to CSX after CSX ceases owning a share of Pan Am Southern.
 - iii. NS, CSX and G&W agree to establish LOS metrics and targets that are consistent with those of CSX and NS.
- b. NS, CSX and G&W agree to establish a **Static Yard Plan** for all movements to, from and through Ayer. NS, CSX and G&W agree that the terminal will be operated on that plan.
 - i. “Significant Changes” to the Static Yard Plan would be subject to approval by NS and CSX (to be implemented by G&W) for so long as NS and CSX jointly own PAS.
 1. “Significant Changes” would mean that any one of the following train pair were impacted by more than 90 minutes: NS Intermodal Trains, NS Automotive Service, the Deerfield – Ayer turn, CSX Overhead Train Pair 1, and CSX Overhead Train Pair 2 and any other then-existing CSX overhead trains.
 - ii. After CSX divests itself of its 50% interest in PAS, PAS may make changes in the Static Yard Plan provided such changes do not create Significant Changes to any then-existing CSX overhead train pair.
- c. NS, CSX and G&W agree that the parties will have access at all times to the property and non-commercially sensitive information sufficient to analyze the LOS and capacity needs.
- d. Neither NS nor CSX can use Ayer yard for storage of equipment beyond normal operating practices and any other exceptions in this agreement

- without prior approval from all parties (NS, CSX and the PAS operator).
- e. As reference, the trains in Exhibit 1 are representative of the types of train volumes and operations expected through Ayer.
 - f. NS and CSX agree to establish the Ayer Static Plan and the Barbers Station – CPF 312 Scheduling plan within 60 days after STB approval, or before the date of G&W's operational start-up of PAS operations, whichever is sooner.

II. CSX Construction (Referring to CSX Drawing MEA20201208)

- a. CSX agrees to fund the construction of certain improvements in Ayer Yard, as depicted on CSX Drawing MEA20201208 dated February 11, 2021, attached hereto and incorporated herein by reference. Those improvements will consist of the following:
 - i. Addition of the "Thoroughfare Storage Track";
 - ii. Addition of the powered, heated, switches at the end of the NW wye as shown in the drawing; and
 - iii. Reconfiguration of the northern throat of Ayer Yard in such a way that accommodates 2 simultaneous moves of (1) inbound or outbound trains through the north end (2) merchandise switching and/or (3) Intermodal switching.
 - 1. The plan as drawn would need to be modified to meet this objective.
 - iv. Reconfiguration of the southern throat in such a way that the center lead can serve either the intermodal tracks or the running track.
 - v. Addition of the Future Thoroughfare Track 1
- b. [REDACTED]
- d. NSR and PAS cooperation and assistance will be needed for the contemplated design and construction and NSR and PAS agree that such cooperation and assistance shall not be unreasonably withheld.

III. Upon consummation of the proposed transaction, CSX shall be permitted to run up to

1 pair of 9000' trains (plus locomotives) per day between Harvard and CPF 312.

- a. If CSX wants to use this train to set off or pick up cars in Ayer, then the train shall be limited to the clear length of the running track, which is currently 4750'.

- i. This 4750' limitation will be increased once CSX funds any project to extend the clear length of the running track as contemplated in II.a.iii above.
- ii. The new train length for any train that is to set off or pick up cars in Ayer will be increased up to the new clear length of the running track.
- b. The cars in these trains shall remain in the revenue waybill account of CSX and will not be for the benefit of another party.
- c. Other commercial terms in this agreement shall apply to these operations.

IV.



v. NSR Premium Train

- a. Upon completion of the required clearances and infrastructure improvements, NS shall be permitted to move up to 1 trackage rights train pair per day over the Voorheesville – Barbers – Ayer route (“NSR Premium Train”).
- b. NSR Premium Train will be limited to 9000’ plus locomotives.
- c. NS may continue to store empty intermodal equipment in Ayer Yard, but shall be limited to 9000’.

VI. CSX Second Overhead Train Pair

CSX shall be permitted to add a second train pair per day for operations between Harvard and CPF 312 under the following terms and conditions:

- a. Operations must be consistent with the Static Yard Plan, subject to Section VI.f. below.
- b. Preferences
 - i. Schedule Preference: NS and CSX agree to have a reasonable operating plan for train movements between Barbers Station and CPF 312. In establishing this plan, NS and CSX will consider operational constraints, such as track occupancy, the Ayer 24 hour operating clock, and commuter window restrictions, as well as efficient scheduling protocols, such as fleeting, to mitigate these constraints. In terms of establishing this plan CSX shall have schedule preferences for its first overhead train pair, and its Ayer Local (e.g. Barbers Station – Ayer), should that train be

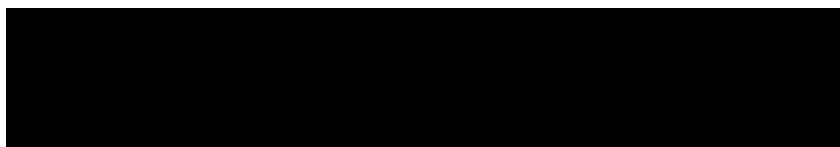
in scheduled operation by the time that NS begins its Premium service over the CSX. If the Ayer Local is not scheduled at this time, then NS shall have preference on scheduled slots. In any case, CSX' second overhead train pair shall have last preference of schedule slots. Should the CSX Overhead Train Pair 2 commence before the NSR Premium Train, the schedules on the CSX Overhead Train Pair 2 shall be modified to accommodate that preference.

- ii. Operating Preference: In terms of operating preference, trains operating in their scheduled window shall have dispatch preference over trains operating out of their scheduled window, unless the cause of one Class I's compliance failure is the result of an action by the other Class I.
- c. CSX will only be able to pick-up or set-off in Ayer Yard – subject to the train length restrictions in III.a. above – with one (but not both) of the two overhead train pairs per day.
- d. Trains shall be limited to 9000' plus locomotives
- e. Upon notice by CSX of its intent to add a second train pair, CSX and NS will confer on the proposed operation of the new Ayer Static Yard plan that incorporates CSX Overhead Train Pair 2 and agree upon infrastructure as necessary to ensure that introduction of the CSX Overhead Train Pair 2 will not degrade the service levels expected at the later of: (1) the construction of the infrastructure contemplated by Section II above, plus the introduction of operations by G&W as operator of PAS, and the introduction of the NS Premium Train; or (2) the contemplated initiation date of the second CSX overhead train pair. For clarification purposes, actual completion of the construction of the infrastructure contemplated by Section II above is not necessary for CSX to provide the notice anticipated by this section. As of the execution date of the Settlement Agreement, the parties contemplate (i) G&W as PAS operator and (ii) the NSR Premium Train being established in the relative short-term following STB approval and consummation of CSX's acquisition of Pan Am. If (i) within 3 years of approval and consummation, G&W is no longer the PAS operator, or the NSR Premium train has not been established, or (ii) at any time before the addition of CSX Overhead Train Pair 2, the agreements relative to both G&W and the NSR Premium Train have been terminated in accordance with their terms, CSX will not be required to consider their impact on service levels prior to the addition of CSX Overhead Train Pair 2.
 - i. This will be an operational and engineering exercise that shall not take more than 3months.
 - ii. If the review of CSX's Overhead Train Pair 2 indicates a degradation to the then-current operations, then CSX and NS agree that there are several different tactics available to mitigate potential operational impacts. CSX and NS will review these several tactics and shall implement, upon mutual agreement, one or more of these to

mitigate those potential operational impacts. These tactics include, but are not limited to:

1. Additional infrastructure at CSX' expense.
 - a. Infrastructure will be reasonable and will not include assets such as flyovers, etc.
 - b. Infrastructure requirements could be outside of the yard limits in order to siphon local freight out of the Ayer yard –
e.g. Fitchburg to Willows.
 - c. Any infrastructure shall be limited to the cap as defined in section II.b.
 2. Increase in speeds through the yard and/or through the Wye.
 3. Modification of the Static Yard Plan, but without creating a Significant Change with regard to any of the trains identified in Section I.b.i.1. above.
- iii. CSX and NSR shall agree upon a mitigation plan within 30 days of concluding the review period. The agreed upon mitigation plan shall have an expected duration for implementation that will take no longer than 6 months to implement (no more than 9 months from CSX providing notice). NSR and PAS cooperation and assistance will be needed throughout this process and NSR and PAS agree that such cooperation and assistance shall not be unreasonably withheld. In no case can NS or PAS prohibit the addition of this second CSX train pair if all of the above tactics are reasonably deployed in accordance with the above protocol and schedule. In the event of a dispute about the parties' mitigation efforts, CSX may operate CSX Overhead Train Pair 2 during the pendency of the dispute.
- iv. In the event the parties, acting in good faith, cannot agree at any point during the process set forth in this Section VI(e), either party may institute an arbitration proceeding in which each party will submit their respective assessment of the impact (if any) to Ayer yard operations and their proposal related to mitigation and timeline. Any such arbitration shall be concluded within twelve (12) months after service of notice of intent to institute an arbitration proceeding.
- f. All cars in both the first and second CSX train pairs will be in the revenue waybill account of CSX and will not be for the benefit of another party.

VII.



VIII. Additional Overhead Trains Through Ayer

At some future date, CSX may want to run additional overhead train pairs between Harvard and CPF312. NS is agreeable to permitting these additional train pairs under the following terms:

- a. Notice to evaluate introduction of additional train pairs beyond the first two described above shall be given no sooner than three (3) years following the consummation of the Transaction.
- b. Operations of any additional train pairs will be consistent with the Static Yard Plan.
- c. CSX will only be able to pick-up or set-off in Ayer yard – subject to the train length restrictions in III.a. – with one of the overhead daily train pairs. CSX will be able to determine from time to time which of the daily overhead train pairs will be the one to set off or pick up in Ayer yard.
- d. Trains will be limited to 9000’ plus locomotives.
- e. Upon notice by CSX of its intent to add an additional train pair beyond those then-currently operated, CSX and NS will confer and agree upon the proposed operation of the new Ayer Static Yard plan that incorporates the additional train pair and agree upon infrastructure as necessary to ensure that introduction of the operation will not degrade the then-current operations (“Additional Train Pair Mitigations”).
 - i. This will be an operational and engineering exercise that shall not take more than 3 months.
 - ii. If the review of the additional train pair indicates a degradation of the then-current operations, then CSX and NS will review these several tactics and shall implement one or more of these to mitigate those potential operational impacts:
 1. Additional infrastructure to be funded by CSX.
 2. Increase in speeds through the yard and/or through the Wye.
 3. Modification of the Static Yard Plan, but without creating a Significant Change with regard to any of the trains identified in Section 1.b.i.1. above.
 4. Reduction in then-current CSX Overhead Train lengths (but only at CSX’s discretion).
 - iii. CSX and NSR shall agree upon a mitigation plan within 3 months of concluding the review period. NSR and PAS cooperation and assistance will be needed throughout this process and NSR and PAS agree that such cooperation and assistance shall not be unreasonably withheld.
 - iv. If, after a good faith review by the parties of the mitigation factors, no combination of the above can be accomplished in such a way as

- to not degrade the then-current operations, then CSX shall not have the right to add additional trains.
- v. In the event the parties, acting in good faith, cannot agree at any point during the process set forth in this Section VIII(d), either party may institute an arbitration proceeding in which each party will submit their respective assessment of the impact (if any) to Ayer yard operations and their proposal related to mitigation and timeline. Any such arbitration shall be concluded within twelve (12) months after service of notice of intent to institute an arbitration proceeding.
 - vi. Introduction of the additional train pair shall be permitted upon implementation of the agreed-upon Additional Train Pair Mitigations (including the conclusion of construction of an agreed-upon or arbitration-compelled infrastructure).
- f. All cars in any new CSX train pairs will be in the revenue waybill account of CSX and will not be for the benefit of another party.

SHIRLEY, MA

AYER, MA

LEGEND

EXISTING TRACK
PROPOSED TRACK
FUTURE TRACK
REMOVE TRACK

SCOPE 1

- CONSTRUCT 2,400' TIMBER TRACK
- CONSTRUCT (2) #10 TIMBER TURNOUTS (HT)

SCOPE 2

- INSTALL SELF-RESTORING SWITCH MACHINES ON EXISTING CROSSOVER

SCOPE 3

- CONSTRUCT 750' TIMBER TRACK
- CONSTRUCT (2) #10 TIMBER TURNOUTS (HT)
- CONSTRUCT 500' OF FUTURE TIMBER TRACK

SCOPE 4

- CONSTRUCT 65' TIMBER TRACK
- CONSTRUCT (2) *10' TIMBER CROSSEVERS (HT)
- REMOVE EXISTING CROSSOVER

SCOPE 5

- CONSTRUCT 2,300' FUTURE TIMBER TRACK
- CONSTRUCT (2) FUTURE #10 TIMBER TURNOUTS (HT)

CLEAR LENGTHS

SOUTH THOROUGHFARE PS -> NORTH M11 PS LENGTH: 9,100'

M3 PS -> PS LENGTH: 3,300'

M2 PS -> NORTH M1 PS: 4,000'

M1 PS -> PS LENGTH: 4,500'

NORTH M1 PS -> END STUB TRACK LENGTH: 1,800'

[illegible]

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

ATTACHMENT TO VERIFIED STATEMENT OF MR. SEAN PELKEY

Term Sheet Agreement

Term Sheet Agreement – Execution Version

**TERM SHEET AGREEMENT
G&W SUBSIDIARY AS PAS OPERATOR**

I. Introductory Provisions

- 1) This Term Sheet Agreement is between CSX Transportation, Inc. (CSXT), as future 50% owner of Pan Am Southern LLC (PAS), Norfolk Southern Railway Company (NSR), as current 50% owner of PAS, and Genesee & Wyoming Inc. (G&W). Collectively, CSXT, NSR and G&W may be referred to herein as the "Parties."
- 2) CSXT, as future indirect 50% owner of PAS, and NSR, as current 50% owner of PAS, will cause PAS to enter into an agreement with a G&W subsidiary (OpCo) to operate PAS and to replace Springfield Terminal Railway Company (ST) as PAS operator effective upon (a) consummation of CSXT's acquisition of Pan Am Systems, Inc. (Pan Am) and Pan Am's indirect interest in PAS (the Transaction), (b) U.S. Surface Transportation Board (STB) approval or exemption of OpCo's replacement of ST as operator of PAS, and (c) execution of implementing agreements with labor. The operating agreement between OpCo and PAS shall be developed based on the existing operating agreement between ST and PAS, as modified as provided in this Term Sheet Agreement.
- 3) At the same time CSXT files its Application with the STB, OpCo will seek operating authority from the STB to operate PAS. Such operating authority will be sought in a separate sub-docket related to CSXT's Application for authority to acquire Pan Am.
- 4) G&W and NSR will support CSXT's STB Application and the parties to this Term Sheet Agreement will reasonably cooperate to obtain authorization from the STB for the terms set out herein. Likewise, CSXT and NSR will support OpCo's STB filing and will reasonably cooperate with G&W and OpCo to obtain authorization from the STB for replacement of ST with OpCo as the operator of PAS consistent with the terms set forth in this Term Sheet Agreement.

NOW, THEREFORE, for good and valuable consideration of \$1.00, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

II. PAS Operations to be Performed by OpCo.

- 1) OpCo will replace ST as the operator of PAS and will provide substantially all of the operating services that ST currently provides on PAS's behalf, with certain exceptions. CSXT will cause ST to assign its operating rights to OpCo with PAS' consent. The new operating agreement will generally mirror the mechanics and provisions of the current operating agreement. Among other things, the new OpCo operating agreement will provide the following:
 - a) PAS will engage and retain OpCo to be the designated Railroad Operator of PAS to manage, administer, supervise, perform and provide all freight rail services over PAS on behalf of PAS. OpCo's service obligations will be substantially the same as those set out

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in Appendix A to the current Railroad Operating Agreement. [REDACTED]

- b) OpCo will appoint a general manager who will manage and supervise the operation, maintenance and use of PAS.
- c) OpCo will perform the maintenance, inspection and repair activities as provided in the current operating agreement. With respect to annual capital maintenance work, PAS will develop an annual budget and CSXT or NSR will have first priority for performing that work, with OpCo or a PAS-approved contractor having responsibility thereafter, subject to the terms of any applicable OpCo labor agreements. Such work shall be performed in accordance with an agreed upon capital maintenance schedule.
- d) OpCo will perform the administrative services, including claims handling, ancillary agreement management, accounting, MBTA and other passenger service interface, and review of PAS trackage and operating rights, as required under the existing operating agreement with ST.
- e) OpCo will assume any contractual obligations of ST with respect to dispatching services provided for MBTA, on behalf of PAS, and other passenger services, including any required local dispatching presence at Billerica, MA. CSXT, NSR and OpCo shall reasonably cooperate to address any concerns raised by those passenger services or the Commonwealth of Massachusetts relating to OpCo's role as operator of PAS.
- f) OpCo will furnish and/or cause to be furnished all labor, materials, supplies, tools and equipment necessary to perform its operating services. [REDACTED]

- g) OpCo will offer employment to ST employees with the goal of filling 159 positions from the following crafts: Transportation, Mechanical, Engineering and Clerical/Dispatch. The parties recognize that this number of employees was what G&W estimated it required as of February 22, 2021 and that the number of employees may change before OpCo commences its role as PAS's operator. OpCo will reasonably adjust its hiring obligation to reflect any such changes. OpCo will give first priority to current ST employees when filling its positions. [REDACTED]

[REDACTED]

OpCo will be similar to ST's current terms.

- h) OpCo will prepare budgets, business plans and net cash flow reports consistent with the obligations of the railroad operator currently set out in section 5.7 of the PAS LLC Agreement.

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- i) Within [REDACTED] after the commencement of OpCo’s operation of PAS, OpCo, NSR and CSXT will agree on a suite of operating metrics and goals that OpCo will measure and report on at least a [REDACTED] basis. Such metrics will include [REDACTED], and other performance metrics as the parties shall agree, and will use current PAS operations as a baseline to measure future performance.

III. OpCo’s Compensation

[REDACTED]

[REDACTED]

[REDACTED]

IV. OpCo’s Pricing Obligations

- 1) As the railroad operator, OpCo will be PAS’s agent responsible for developing, establishing and quoting the rates that will be charged by PAS for movements on PAS. OpCo will also be

Term Sheet Agreement – Execution Version

responsible for establishing the form and content of any new customer transportation agreements involving movements on PAS.

- 2) OpCo will be responsible for all PAS customer interface, including invoicing PAS customers.
- 3) The interline and local traffic moving over PAS that is subject to PAS rates that will be set by OpCo will move in the revenue waybill of PAS.
- 4) Except to the extent established in the NSR Joint Use Agreement, the rates established and charged by PAS, while not necessarily equal, will not discriminate as to any rail carrier connecting to PAS, except based on mileage, density and similar operating characteristics. For the avoidance of doubt, the NSR Joint Use Agreement will be honored and is considered as an exception to this otherwise all-encompassing rule. OpCo will not use its rate-setting obligation to create a competitive advantage or disadvantage to any rail carrier or between or among any rail carriers connecting to PAS. OpCo will establish and charge rates on behalf of PAS that advance the economic interest of PAS as an independent rail carrier. OpCo will not establish or charge rates that are intended to favor the interests of any individual PAS owner or the separate interests of G&W and its affiliates. In setting non-discriminatory rates, OpCo can take into account the relative volume of traffic interchanged with a particular rail carrier, the commodity involved, the mileage traveled and equipment provided, so long as any such rates are reasonably based on cost differences associated with such differences in traffic.
- 5) OpCo will establish and charge rates that are sufficient to cover, but not be limited to, the fully allocated costs of PAS operations in the aggregate, including the total compensation paid to OpCo as PAS operator and services that are outsourced and not performed by PAS [REDACTED]. The intent of this provision is to ensure that revenues from PAS operations are at least sufficient to cover PAS operating costs and capital without a subsidy from PAS' equity holders.
- 6) Subject to the requirements above that rates be non-discriminatory and cover fully allocated costs, OpCo will develop, establish and charge market-based rates for PAS' services.

V. Additional Considerations

- 1) G&W, NSR and CSXT will agree to cooperate and take actions reasonably necessary to address any competitive concerns raised by OpCo's role as PAS operator and any concerns raised by States or passenger agencies that have operations over PAS lines. It is agreed that any such actions shall be solely limited to the purpose of preserving the current competitive position of a concerned party and not to either worsen or improve their competitive position or put PAS, NSR, CSXT or any G&W affiliate, in a less advantaged position than they are currently.

[REDACTED]

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[REDACTED]

- 3) CSXT, NSR and G&W recognize the STB will impose New York Dock labor protective conditions on CSXT's Application, including OpCo's acquisition of rights to operate PAS. Such New York Dock protection will be available to any eligible ST employee adversely affected by the Transaction. The parties will cooperate in the formation of New York Dock implementing agreements that provide for the division of ST employees between OpCo and ST in a manner satisfactory to CSXT and OpCo. CSXT, NSR and G&W also recognize that OpCo cannot take over PAS operations until required New York Dock implementing agreements are in place and have been implemented. The parties will seek to minimize any labor protection costs. CSXT and NSR will split the costs of any New York Dock labor protection as set forth in the Settlement Agreement to be entered into by them. For the avoidance of doubt, CSXT and NSR acknowledge and agree that neither G&W nor OpCo shall bear any New York Dock labor protection costs associated with CSXT's acquisition of Pan Am and/or OpCo's replacement of ST as PAS operator and/or termination or expiration of the new operating agreement.

[REDACTED]

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[REDACTED]

- 5) The Parties shall act in good faith and use commercially reasonable efforts to satisfy any conditions imposed by the STB on its approval of the Transaction. [REDACTED]

[REDACTED]

- 6) [REDACTED]

- 7) [REDACTED]

- 8) In order to promote a seamless transition, CSXT and NSR shall cooperate with OpCo before and during the transition of PAS operations to OpCo.

VI. Confidentiality; Consents; Regulatory Authority

- 1) Other than as required for regulatory authority, the contents of this Term Sheet Agreement shall remain confidential.
- 2) Except as otherwise set forth herein, the obligations of the Parties contained in this Term Sheet Agreement are intended to be binding upon the Parties and their successor and assigns; provided, however, that the obligations of the Parties described herein with respect to the operation and management of the PAS rail lines by OpCo are subject to the STB's approval

Term Sheet Agreement – Execution Version

of the Transaction as provided in the introduction hereof, the execution and delivery of the new Railroad Operating Agreement between OpCo and PAS and the Parties' obtaining any necessary consent from third parties, government authorities, or any other necessary consent to effectuate the proposed Transaction.

- 3) Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the PAS LLC Agreement or the existing Railroad Operating Agreement, as applicable.

[Signatures on following page]

Term Sheet Agreement – Execution Version
Signature Page

The Parties hereto have caused this Term Sheet Agreement to be executed by their respective authorized representatives as of the dates set forth below.

CSX TRANSPORTATION, INC., a Virginia corporation

By: Sean Pelke
 (print name)

Name: [Signature]
 (signature)

Title: V.P. and Treasurer
 (print title)

Date: 11/13/2021

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: _____
 (print name)

Name: _____
 (signature)

Title: _____
 (print title)

Date: _____

GENESEE & WYOMING INC., a Delaware corporation

By: _____
 (print name)

Name: _____
 (signature)

Title: _____
 (print title)

Date: _____

Term Sheet Agreement – Execution Version
Signature Page

The Parties hereto have caused this Term Sheet Agreement to be executed by their respective authorized representatives as of the dates set forth below.

CSX TRANSPORTATION, INC., a Virginia corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: Michael R. McClellan
(print name)

(print name) 
Name: _____
(signature)

Title: VP Strategic Planning
(print title)

Date: 2/23/21

GENESEE & WYOMING INC., a Delaware corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

Term Sheet Agreement – Execution Version
Signature Page

The Parties hereto have caused this Term Sheet Agreement to be executed by their respective authorized representatives as of the dates set forth below.

CSX TRANSPORTATION, INC., a Virginia corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: _____
(print name)

Name: _____
(signature)

Title: _____
(print title)

Date: _____

GENESEE & WYOMING INC., a Delaware corporation

By: MATTHEW C. WATSH ---
(print name)
(print name)

Name: [Signature]
(signature)

Title: VP of Development
(print title)

Date: 2/23/21

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 22

Verified Statement of Dr. David Reishus

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.

—CONTROL AND MERGER—

PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

Verified Statement of
David Reishus, PhD

February 25, 2021

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	WITNESS INTRODUCTION	1
B.	ASSIGNMENT.....	1
C.	SUMMARY OF CONCLUSIONS	2
II.	DESCRIPTION OF THE RAILROADS AND THE PROPOSED TRANSACTION	4
A.	NEW ENGLAND FREIGHT RAILROADS	4
B.	CSXT	6
C.	PAN AM SYSTEM	6
1.	PAR	7
2.	PAS.....	9
D.	OVERVIEW OF THE POST-TRANSACTION RAILROADS.....	12
III.	MERGERS AND THE ECONOMICS OF COMPETITION	13
A.	HORIZONTAL EFFECTS	14
B.	VERTICAL EFFECTS.....	16
IV.	THE PROPOSED TRANSACTION IS PRO-COMPETITIVE	17
A.	THE PAR SYSTEM.....	17
1.	Benefits of the acquisition of the PAR System by CSXT	18
2.	The acquisition of PAR by CSXT does not harm jointly served shippers	19
B.	PAS	20
1.	Benefits of CSXT’s acquisition of Systems’ ownership share of PAS and B&E operation of PAS	20
2.	The acquisition of Pan Am’s ownership share of PAS by CSXT and the proposed operating agreement would not harm jointly served shippers	23
C.	ADDITIONAL BENEFITS AND PROTECTIONS.....	25
V.	CONCLUSION	26

I. INTRODUCTION

A. WITNESS INTRODUCTION

1. My name is David Reishus. I am currently an Executive Vice President at Compass Lexecon in Boston, Massachusetts. Compass Lexecon is an economics consulting firm with offices in various cities throughout North America, South America, and Europe. I earned my M.A. and Ph.D. degrees in economics from Harvard University.
2. Over the past 25 years, I have worked extensively on the organization of markets, competition, and firm behavior in a variety of industries. I have testified before various state, Federal and international bodies on competition issues, primarily in the energy and transportation industries. I have provided testimony multiple times before the Surface Transportation Board (the “STB”) on matters involving competition in the railroad industry.
3. I have analyzed competition issues associated with railroad merger transactions and associated conditions on those mergers. I participated in the analysis of the competitive effects and associated merger conditions for the major railroad consolidations in the 1990s involving Union Pacific/Southern Pacific, Burlington Northern/Santa Fe, and the Conrail transaction. In addition, since then I have testified before (or made presentations to) the responsible government authorities regarding competitive issues arising from proposed transactions involving railroads in the U.S., Canada, and Mexico. My full vita is attached.
4. The opinions expressed herein are my own, and do not necessarily represent those of my employers or their other employees.

B. ASSIGNMENT

5. I have been asked by CSX Corporation and CSX Transportation, Inc. (“CSXT”) (collectively referred to as “CSX”) to analyze the competitive effects, if any, of the acquisition by CSX of Pan Am Systems, Inc. (“Systems”), a non-carrier – including its rail carrier subsidiaries, and its interest in Pan Am Southern LLC (“PAS”) (the “Proposed Transaction”). As part of this analysis, I have also been asked to analyze the competitive effects of the separate but closely related transactions and agreements entered between CSXT, Norfolk Southern Railway Company (“NSR”), and Genesee and Wyoming Inc. (“GWI”) (collectively, the “Related Transactions”) contingent on Proposed Transaction.

C. SUMMARY OF CONCLUSIONS

6. The Proposed Transaction involves the acquisition of Systems by CSX. Systems has ownership interests in two connected railroad networks in New England. Systems wholly owns Pan Am Railways, Inc. (“PAR”), which in turn controls seven rail carriers identified in the CSX Application (the “PAR Railroads”) that own and operate a unified rail network in eastern Massachusetts, New Hampshire, and Maine (the “PAR System”).¹ One of those PAR Railroads, Springfield Terminal Railway Company (“Springfield Terminal”) operates rail service on the entire PAR System on behalf of the PAR Railroads. Another of the PAR Railroads, Boston and Maine Corporation (“Boston & Maine”), owns a 50% interest in PAS, which is jointly owned with NSR and has a mainline between upstate New York and eastern Massachusetts. PAS is currently operated on a contract basis by the Springfield Terminal.
7. I have analyzed the economic implications of the Proposed Transaction and associated commitments as outlined in CSX’s application. I conclude that the transaction as proposed is procompetitive and will not result in any substantial reduction in competition. The Proposed Transaction and Related Transactions represent a pro-competitive rationalization of the New England rail network with widespread benefits to shippers across New England.
8. With respect to pro-competitive benefits, I find that existing PAR System shippers will benefit from more reliable, consistent, and efficient service as a result of the new, single-line, Class I rail service across New England that will be created by the Proposed Transaction. Further, to the extent that CSXT can offer an improved combination of price and service, it makes rail a more effective competitor against other modes of transportation.
9. I have also analyzed the proposed Related Transactions between CSXT, NSR, PAS and GWI. I find these agreements create additional benefits by further rationalizing the New England rail system to create new transportation options for shippers and enhance efficiency and improve rail service in New England. These main elements of the Related Transactions include:
 - **Pittsburg & Shawmut Railroad, LLC, doing business as Berkshire & Eastern Railroad (“B&E”) Operation of PAS:** B&E, a wholly-owned subsidiary of GWI, is to be operator of PAS, taking over the responsibilities currently undertaken by Springfield

¹ For purpose of this statement, PAS is not considered part of the PAR System in discussing rail operations.

Terminal. This will preserve PAS as an independent rail route for shippers between upstate New York and eastern Massachusetts. Further, GWI is a well-established railroad holding company that operates numerous railroads, including several rail carriers in New England. To the extent B&E introduces operational efficiencies and more streamlined coordination with other GWI railroads, that will improve service on the PAS line and benefit PAS shippers.

- **NSR Trackage Rights:** NSR will receive trackage rights from CSXT providing additional and more efficient access to the intermodal terminal in Ayer, Massachusetts. This creates a new route for NSR, providing NSR additional options for serving intermodal customers in eastern Massachusetts.
- **CSXT Trackage Rights:** Upon completion of certain capital improvements financed by CSXT, NSR agrees to modify current trackage rights caps that exist over the segment of the PAS system that connects CSXT with the PAR System in eastern Massachusetts. The modification of these caps will improve and guarantee CSXT's ability to serve traffic on the current PAR System efficiently.

10. I have also analyzed whether the combined operations or common control of these railroads creates the potential for competitive harm. These potential harms fall into two categories of economic analysis. The first category, horizontal effects, considers the potential reduction in competition among railroads to serve existing or potential shippers. The second category, vertical effects, considers a more limited and theoretical concern over the reduction in competition arising from relationships involving interline movements.

11. I find that the proposed transaction does not create horizontal competitive concerns.

- With respect to the PAR System, and when considered in conjunction with the Related Transactions, the CSXT and PAR System rail lines are largely end-to-end, with very limited overlap in the greater Boston area. There are a handful of customers that are currently served by both the PAR System and CSXT; CSXT has committed to preserving competitive options for these customers through switching rights.
- With respect to PAS, CSXT will retain ownership interest in PAS but, as a result of the operating agreement with B&E, will have no pricing or operational control with respect to

PAS. This preserves PAS as an independent rail option and preserves any existing competitive benefits to PAS shippers. There are few customers or interconnecting railroads that are currently jointly served by PAS and one of GWI's New England railroads. The Related Transactions include commitments to preserve competitive options for these shippers. The Related Transactions include multiple commitments to preserve existing competitive benefits for the one interconnecting railroad that might face a loss of intramodal competition as a result of operation of PAS by B&E.

12. I find that the proposed transaction also does not create vertical competitive concerns. Consistent with basic economic theory, CSXT has no economic incentive to foreclose more efficient interchanges. Nevertheless, CSXT has committed to maintain existing interchanges.

II. DESCRIPTION OF THE RAILROADS AND THE PROPOSED TRANSACTION

A. NEW ENGLAND FREIGHT RAILROADS

13. The proposed transaction involves the acquisition by CSXT of railroads (the PAR System) and an ownership interest in PAS; apart from the PAS western interconnections in eastern New York, these lines lay within New England. The New England rail system is among the oldest and most fragmented portions of the U.S. rail network. The rail network consists mostly of numerous shortline or regional railroads. (See Attachment 1 to the CSX Application for a detailed map.) For many of the line segments, the rights to serve traffic and operatorship are distinct from the ownership of the rail line. Significant mileage and/or segments of rail lines are owned by the New England states, as well as segments owned, and in some locations operated, by the National Railroad Passenger Corporation ("Amtrak") and the Massachusetts Bay Transportation Authority ("MBTA").² (In general, freight railroads retain rights to serve traffic located on these lines owned or operated by passenger rail authorities.)

² For state ownership of rail lines, see Maine Department of Transportation, "Maine State Rail Plan", July 2014, at 9; Massachusetts Department of Transportation, "Massachusetts State Rail Plan", May 2018, at 2; New Hampshire Department of Transportation, "New Hampshire State Rail Plan", 2012, at 2; Connecticut Department of Transportation, "Connecticut State Rail Plan", 2012, at 8; Vermont Department of Transportation, "Vermont State Rail Plan", 2015, at I; New York Department of Transportation, "New York State Rail Plan", 2009, at 66 and 68.

14. The primary rail freight connections between New England and the rest of the eastern U.S. rail network are through two rail lines running between upstate New York and eastern Massachusetts. One is the PAS line running between the Mechanicville, New York area and the Ayer, Massachusetts area. The other is the CSXT line between Selkirk, New York and Worcester, Massachusetts.³ Until last year, CSXT had been the only Class I railroad operating in New England with its mainline extending from upstate New York to eastern Massachusetts.⁴ NSR serves certain locations and interchange traffic through a haulage agreement with its 50%-owned PAS.⁵ The PAS and CSXT lines are discussed in more detail below.
15. Other freight rail routes connect New England and Canada through Vermont, New Hampshire, and Maine.
 - The GWI-owned New England Central Railroad (“NECR”) connects with Canadian National Railway Company (“CN”) in northern Vermont. The NECR line extends south through Vermont, Massachusetts, and into southern Connecticut where it connects with other GWI-owned railroads.
 - CN also connects with the GWI-owned St. Lawrence & Atlantic Railroad (Quebec) (“SLQ”) in Quebec. The SLQ connects to the St. Lawrence & Atlantic Railroad (“SLR”) in the United States and connects with the PAR System at Danville Junction, Maine.
 - Canadian Pacific Company (“CP”) acquired the Central Maine & Québec Railway U.S., Inc. (“CMQ”) in 2020 and now provides single-line service into northern New England between the Montréal area and Northern Maine Junction where it connects to the PAR System.⁶
 - A rail line from Saint John, New Brunswick also connects with the PAR System at Mattawamkeag in northern Maine.

³ The eastern ends of the lines are more specifically CPF 312 and Barbers Station, respectively. CSXT also retains rights to serve freight into the greater Boston area.

⁴ Canadian Pacific also has a line that connects with Vermont Rail System in Vermont near the Canadian border.

⁵ *See Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 et al., slip op. at 7 (STB served Mar. 10, 2009). CP and CN also serve New England shippers through interconnection or haulage agreements with other New England rail carriers.

⁶ STB Docket No. FD 36368, *Soo Line Corporation—Control—Central Maine & Quebec Railway US Inc.*, Decision, May 4, 2020.

B. CSXT

16. CSXT is a large Class I railway with operations in 23 states across the eastern U.S., including Massachusetts and Connecticut, and into Canada. CSXT's mainline into New England runs between Selkirk, New York and Springfield and Worcester in Massachusetts. The CSXT mainline connects with the PAR System near Worcester with interchange at Barbers Station. The mainline continues east from Worcester serving freight shippers in the greater Boston and southeastern Massachusetts area over a variety of lines, many owned by the MBTA. (See Attachment 1 to the CSX Application.)
17. CSXT's access to New England shippers occurs primarily through its own mainline which connects with several New England railroads including with the PAR System near Worcester, Massachusetts to reach New Hampshire and Maine. CSXT, however, also serves New England shippers by interlining with PAS at Rotterdam Junction, New York and thereby reaching PAS-served shippers and other shippers located on rail lines that interconnect with PAS including some traffic that further interlines with the PAR System.
18. CSXT also has certain rights over the Amtrak line between New Haven, Connecticut and Springfield, Massachusetts. Connecticut Southern Railroad ("CSO"), a GWI railroad, has rights to operate over the Springfield-New Haven line. Although CSXT does not serve any shippers on that line, it has rights to interconnect at Hartford, Connecticut to the Central New England Railroad ("CNZR"), and at New Haven to southern Connecticut shippers. CSXT exercises these rights through a haulage arrangement with CSO.

C. PAN AM SYSTEM

19. Systems, through Boston & Maine, owns a 50% interest in PAS, which is jointly owned with NSR. The PAR System lines are located in eastern Massachusetts, New Hampshire, and Maine. The PAS mainline, named the 'Patriot Corridor', runs between upstate New York and a point just past Ayer, Massachusetts where it connects with the PAR System. PAS also uses a north-south route running between Vermont and Connecticut over GWI-owned lines which connects with its mainline at East Deerfield, Massachusetts and connects with other PAS lines in Connecticut. Springfield Terminal, a PAR Railroad, operates the PAR System as lessee of lines owned by the PAR Railroads. Springfield Terminal also operates PAS, but on a contract

basis. The traffic and revenue for the PAR System and PAS are accounted for separately by Springfield Terminal.

1. PAR

20. The PAR System consists of approximately 808 route miles of rail lines in Maine, New Hampshire and eastern Massachusetts.⁷ The PAR System interchanges with the two southern New England freight mainlines west of Boston: CSXT at Barbers Station and PAS at Ayer. As can be seen in Attachment 1 to the CSX Application, track owned by the PAR Railroads that connects with CSXT is noncontiguous with other parts of the PAR System, with the small rail segment between Harvard, Massachusetts and CPF 312 (the “Island Line”) owned by PAS. The PAR System operates over that Island Line using trackage rights on PAS.⁸ The PAR System also has switching rights over PAS to serve industrial customers in Ayer but *only* for traffic from the north and east, not for traffic from its southern line segment that connects with CSXT.⁹
21. In Massachusetts, the PAR System provides freight service over certain lines and shippers in the greater Boston area. The PAR System runs between eastern Massachusetts and Mattawamkeag, Maine toward the Canadian border. At this point it connects to the Irving-owned New Brunswick & Maine Railways (“NBM”),¹⁰ a set of three connected shortlines serving northern Maine and running to St. John, New Brunswick, where it connects to the CP and CN mainlines. The PAR System has haulage rights over the NBM, so the PAR System provides an economically independent service between New Brunswick and eastern Massachusetts that connects with the southern New England U.S. mainlines (CSXT and PAS). The PAR System also interconnects with CP (on the recently acquired CMQ line) at Brownsville Junction and Northern Maine Junction.

⁷ CSX Application at 26. The PAR System also has a small noncontiguous rail line segment in Vermont, between St. Johnsbury and Gilman, that is dormant.

⁸ Springfield Terminal Joint Use Agreement, April 9, 2009.

⁹ Springfield Terminal Joint Use Agreement, April 9, 2009.

¹⁰ NBM Railways consists of New Brunswick Southern Railway (“NBSR”), Eastern Maine Railway (“EMRY”) and Maine Northern Railway (“MNR”).